

REMARKS/ARGUMENTS

Claims 1-7 and 15-21 are pending. The abstract has been amended. The specification has been amended. The claims have been amended. No new matter has been introduced. Reexamination and reconsideration of the present application is respectfully requested.

Abstract

The Examiner objected to the language of the abstract. The Applicant has now amended the abstract to correct the language of the abstract as suggested by the Examiner. The Applicant respectfully submits that the above objection has been overcome.

Specification

The Examiner objected to the specification disclosure due to two informalities. First, the Examiner noted a typographical error in which SEQ ID NO:2 should be designated as a substrain rather than SEQ ID NO:4. The Applicant has now amended the specification to correct this error. Second, the Examiner noted that “it is difficult to determine the relationship among SEQ ID No. 1-4 because the SEQ IDs are not correlated with the actual names on the figures.” The Applicant has now amended the specification to list the bacteria strain or substrain that corresponds to each of SEQ ID NOs:1-4.

The Applicant respectfully submits that the above objections have been overcome.

Claim Rejections

Claims 1-7 and 15-21 are pending. Claims 8-14 and 22-28 have been withdrawn pursuant to a Restriction Requirement. Claims 2-32 have been previously canceled pursuant to the Restriction Requirement. The Applicant reserves the right to later file one or more divisional applications directed to the subject matter of the non-elected/cancelled claims.

35 U.S.C. §112

The Examiner objected to the claims 1-7 and 15-21 as “being indefinite” under 35 U.S.C. 112, second paragraph. First, the Examiner noted that claims 1 and 15 contain “unclear” language. The Applicant has amended the claims to particularly point out and distinctly claim

the subject matter which the Applicant regards as the invention. Second, the Examiner objects to claims 15-21 because "[t]he limit of the size of the probes with regard to the limitation of 96% is unclear because it encompasses partial nucleotides." The limitation of a nucleotide sequence having 96% identity with SEQ ID NO:5 has been amended to recite a nucleotide sequence represented by SEQ ID NO:5 so that partial nucleotides are no longer encompassed within the scope of the claim.

The Applicant respectfully submits that the above rejections have been overcome.

35 U.S.C. §102(a)

The Examiner rejected claims 15-21 as being anticipated under 35 U.S.C. §102(a) by Hovanec *et al.* (WO 01/90312 A1 November 29, 2001).

As discussed above, claim 15 has been amended such that the limitation of a nucleotide sequence having 96% identity with SEQ ID NO:5 has been amended to recite a nucleotide sequence represented by SEQ ID NO:5. Because support for a detectably labeled probe including a nucleotide sequence of SEQ ID NO:5 is disclosed in the specification of Patent Application No. 09/573,684. Page 15, fourth paragraph; Page 23, Table 5; and Page 24, first paragraph; claims 26-27. Thus, claim 15, as amended, is accorded an earlier priority date than the publication date of the cited reference, WO 01/90312. Accordingly, the Applicant respectfully submits that independent claim 15, as amended, is not anticipated by the cited reference.

Claims 16-21 are directly dependent from independent claim 15. Accordingly, the Applicant respectfully submits that claims 16-21 are not anticipated by the above-cited reference for the reasons set forth above with respect to independent claim 15.

The Applicant respectfully submits that the above rejections have been overcome.

Conclusion

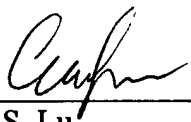
This response is being submitted within the three month deadline. In the case any fee is owed, please charge deposit account number 03-3975 (ref. 81289-284781). The Applicant believes that claims 1-7 and 15-21 are now in condition for allowance, and a favorable action is respectfully requested. If, for any reason, the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los

Angeles telephone number (213) 488-7100 to discuss the steps necessary for placing the application in condition for allowance should the Examiner believe that such a telephone conference would advance prosecution of the application.

Respectfully submitted,

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Date: 6/2/2006

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